

To: CN=Karen Schwinn/OU=R9/O=USEPA/C=US@EPA;CN=Carolyn Yale/OU=R9/O=USEPA/C=US@EPA[]; N=Carolyn Yale/OU=R9/O=USEPA/C=US@EPA[]
Cc: []
From: CN=Tom Hagler/OU=R9/O=USEPA/C=US
Sent: Tue 11/8/2011 11:08:19 PM
Subject: Here is the State Board discussion of "dilution not solution to pollution."
RSheehan@mwdeh2o.com

Erin seems to be getting this from all sides.

Tom Hagler
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----- Forwarded by Tom Hagler/R9/USEPA/US on 11/08/2011 03:07 PM -----

From: Erin Foresman/R9/USEPA/US
To: Tom Hagler/R9/USEPA/US@EPA, Karen Schwinn/R9/USEPA/US@EPA
Date: 11/03/2011 01:24 PM
Subject: Page 26 in Appendix D Toxins state comments

Did you see this text in the state's comments?

ATTACHMENT TO TOXICS COMMENTS

If the water quality analysis ultimately concludes there is a biologically relevant change in a pollutant level related to a proposed change in the amount of water the SWP and CVP convey through the Delta, there is a legal question regarding whether the SWP and CVP should continue to mitigate the effect caused by another's pollution through continued dilution of the pollution with SWP and CVP water.

As SWRCB Decision 1379 explains, it is the state's policy that pollution be remediated at the source, stating:

Recent state and regional board activity in the regulation of waste discharges demonstrates an intent to protect the Delta environment with stringent controls on waste discharges at the earliest reasonable date. Waste discharges will be managed and where possible reused with a view toward achieving these prime objectives. No one has a right to pollute the waters of the state regardless of the quantity of water that may flow in the particular streams.

In fact, it is likely a waste of water, thus prohibited under state law, to use water resources to dilute pollution. SWRCB Decision 1628 states:
The use of water to dilute pollutants other than ocean derived salts may be unreasonable. The Board

prefers to control pollution at its source. The Board's regulations provide that the quantity of water diverted under a permit or license is subject to modify if necessary to meet water quality objectives, but the regulations also provide that the Board will not modify a permit or license if water quality objective can be achieved through the control of waste discharges. 23 Cal. Code Regs. Section 780(b).

Based on the statements above, as well as other legal and scientific rationales, before mitigation measures could be imposed requiring the maintenance of flows for dilution of pollution, the factors found in state law relating to the waste of water must be applied. There are quite a few factors that would have to be evaluated, like the fact there readily identifiable polluters that are already under legal obligations to cease the continued pollution of the state's waters, the state law that requires that water be put to its highest and best use, the Delta Legislation that commits the state to the dual goals of water supply and environmental protection, the infeasibility of using available water supplies to dilute pollution as a result of the flashy nature of many toxic events (like first flush events), etc.

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<http://www.epa.gov/region9/water/watershed/sfbay-delta/index.html>

-----Forwarded by Erin Foresman/R9/USEPA/US on 11/03/2011 01:24PM -----
To: Erin Foresman/R9/USEPA/US@EPA
From: Leanna_Zweig@fws.gov
Date: 11/03/2011 10:21AM
Subject: Fw: Appendix D Toxins state comments
(See attached file: BDCP_EA_Toxins_CommentForm ALL state comments 110211.docx)

Erin,
Attached are the State's comments on the Toxins appendix as an FYI. I am interested on EPA's take on p. 26 which references SWRCB Decision 1379 and 1628 pertaining to use of water to dilute pollutants. Does it pertain to just point source pollution? This seems to conflict with recent national efforts related to instream flow requirements to maintain water quality.

Any insight would be greatly appreciated. I am still learning to navigate the bizzare world of California water regulations.

Thanks,
Leanna

----- Forwarded by Leanna Zweig/R8/FWS/DOI on 11/03/2011 10:08 AM -----
Steven Culberson/R8/FWS/DOI
11/03/2011 09:00 AM

To Leanna Zweig/R8/FWS/DOI, Matt Nobriga/R8/FWS/DOI@FWS
cc
Subject Fw: Appendix D Toxins state comments

Friends --

a copy of the State comments for your files. Worth a quick glance -- some interesting things. I especially like how they've recommended re-coloring some table entries and list citations for why that should be so.

Steve

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----- Forwarded by Steven Culberson/R8/FWS/DOI on 11/03/2011 08:58 AM -----

"Barajas, Federico" <FBarajas@usbr.gov>

11/02/2011 06:01 PM

To "Fry, Susan M" <SFry@usbr.gov>, "Culberson, Steven" <steven_culberson@fws.gov>, "Milligan, Ronald E" <RMilligan@usbr.gov>, "Chotkowski, Michael" <michael_chotkowski@fws.gov>, "Hoover, Michael" <michael_hoover@fws.gov>, "Maria Rae (Maria.Rea@noaa.gov)" <Maria.Rea@noaa.gov>, "david.swank@noaa.gov" <david.swank@noaa.gov>, "Mike Tucker (Michael.Tucker@NOAA.GOV)" <Michael.Tucker@NOAA.GOV>, "Van Nieuwenhuyse, Erwin E" <EVanNieuwenhuyse@usbr.gov>, "Grimaldo, Lenny F" <LGrimaldo@usbr.gov>, "Israel, Joshua A" <JAIsrael@usbr.gov>, "Barnett-Johnson, Rachel" <rbarnettjohnson@usbr.gov>, "Idlof, Patricia S (Patti)" <PIdlof@usbr.gov>, "Chrisney, Ann C" <achrisney@usbr.gov>, "Allen, Kaylee" <Kaylee.Allen@sol.doi.gov>

cc

Subject FW: Appendix D Toxins state comments

Hello,

State comments on Appendix D are attached for your information and review. The state/federal consolidated comments mtg will be held at Bonderson tomorrow at 2pm - rm 422. Thanks, FB

From: Darby, Nicole [ndarby@water.ca.gov]

Sent: Wednesday, November 02, 2011 5:09 PM

To: Barajas, Federico
Cc: Laura King Moon; RSheehan@mwdh2o.com; Scott Cantrell; Chuck Gardner; Harrell, Bill
Subject: FW: Appendix D Toxins state comments
Good Afternoon –

Attached are the comments for the BDCP EA Toxins Appendix. The meeting is scheduled for tomorrow, Thursday November 3, 2011 from 2pm – 4pm in Room 422.

Cheers,
Nicole

From: Khamphanh, Joy
Sent: Wednesday, November 02, 2011 4:28 PM
To: Darby, Nicole; Smith, Tim
Cc: Harrell, Bill
Subject: Appendix D Toxins state comments

Hi Nicole,

Please find attached all state comments compiled for Appendix D Toxins. Please let me know if you have any questions.

Thank you,

Joy [attachment "BDCP_EA_Toxins_CommentForm ALL state comments 110211.docx" deleted by Tom Hagler/R9/USEPA/US]